In the High Court of Judicature at Madras

Dated: 05.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.40719 of 2002

S.Leister ..Petitioner

..vs..

1. The Union of India,
   rep.by the Secretary,
   Ministry of Home Affairs,
   New Delhi.

2. The Inspector General,
   Central Industrial Security Force,
   South West Sector,
   RCFL Complex,
   Mumbai-74.

3. The Deputy Inspector General,
   Central Industrial Security Force,
   Southern Zone,
   D-Block, Rajaji Bhavan,
   Besant Nagar,
   Chennai-600 090.

4. The Commandant,
   CISF Unit,
   Chennai Port Trust,
   Chennai-600 001. ..Respondents

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Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent in Order No.V-11014/33/SZ/LC/SWS/02/7914 dated 25.09.2002, confirming the order of the 3rd respondent in Order No.V-11014/07/2002/L&R (SZ)/ 2486 dated 28.03.2002 and the order of the 4th respondent in Order No.V-15014/1/Estt.I/CHPT/SL/01/12051 dated 15.12.2001 and quash the same and direct the respondents to reinstate the petitioner in service with back-wages and all other attendant benefits.

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For Petitioner : Mr.T.N.Sugesh

For Respondents : Mr.S.Udayakumar,
SCGSC.,

ORDER

(Order of the Court was made by P.SATHASIVAM,J.,)

Aggrieved by the orders of the respondents dated 15.12.2001, 28.03.2002 and 25.09.2002, the petitioner has filed the above writ petition, to quash the same and direct the respondents to reinstate him in service with backwages and all other attendant benefits.

2. According to the petitioner, initially he was appointed in the Central Industrial Security Force (hereafter referred to as "CISF") on 25.03.1982. Thereafter, he was transferred and posted to CISF Unit, Chennai Port Trust in the month of July, 1998. while he was serving at Chennai Port Trust, he was served with charge memo, which reads as follows:

> "No.824430179 Constable S.Leister of CISF Unit, Chennai Port Trust, Chennai is charged with grave misconduct and exhibition of indiscipline in that on 8.9.99 at about 1900 hours he entered into the quarter of Constable B.T.Rao, while he was away on 'B' shift at MDLB and misbehaved with his wife Smt.B.L.Saroja and he also attempted tried to molest her when she was alone in the quarter. Thus Constable S.Leister exhibited serious misdemeanor, indiscipline and grave misconduct quite unbecoming of a member of a disciplined Armed Force of the Union. Hence the charge".

3. It is not in dispute that he participated in the enquiry and putforth his defence. It is seen from the records that the complainant, wife of B.T.Rao was examined as C.W.1 and another eye witness was examined as C.W.2. Apart from the above witnesses, the prosecution has examined four witnesses as P.Ws.1 to 4 to prove the charge levelled against the petitioner. The petitioner himself was examined as D.W.1 and one more witness was examined as D.W.2. The Enquiry Officer, after considering the oral and documentary evidence, arrived a conclusion that the charge levelled against the petitioner is proved and submitted his report. The disciplinary authority, after accepting the report of the Enquiry Officer, imposed a punishment of compulsory retirement from service with full pension and gratuity benefits as per the existing rules with effect from the date of receipt of the said order. Aggrieved by the said order, the petitioner preferred an appeal. The Appellate Authority, considering the grounds raised and the order passed by the

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disciplinary authority, concurred with the conclusion arrived and rejected the appeal. The revision filed against the said order has also been dismissed.

4. Learned counsel for the petitioner mainly submitted that the eye witness examined as C.w.2 did not support the charge. He also contended that though the enquiry was conducted at Chennai, C.W.1, the Complainant was examined at Vaizag and because of the same, the petitioner was not able to attend and cross examine her.

5. We are unable to accept both the contentions for the following reasons: It is not in dispute that the petitioner was intimated about the examination of the complainant at Vaizag. In such circumstances, it is for the petitioner to make arrangement and cross examine her at Vaizag. Though C.W.2 has not mentioned anything about the petitioner as claimed in the complaint, the statement of C.W.1-the complainant cannot be ignored. In addition to the same, on the side of the prosecution, four witnesses were examined as P.Ws.1 to 4. The Enquiry Officer, after considering the statement of those witnesses as well as the defence taken by the petitioner as D.W.1 and D.W.2, concluded that there were ample evidence to prove the charge. The same was rightly considered and accepted by the disciplinary authority, appellate and revisional authorities. It is relevant to point out that in spite of the nature of the charge, which was proved by acceptable evidence, the petitioner was awarded punishment of compulsory retirement with full pension and other benefits. In such circumstances, we are of the view that no valid ground for interference. On the other hand, we are in agreement with the said conclusion. Consequently, the writ petition fails and the same is dismissed. No costs.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
   The Union of India,
   Ministry of Home Affairs,
   New Delhi.

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4. The Commandant,
   CISF Unit,
   Chennai Port Trust,
   Chennai-600 001.

1 cc to Mr.S.Udayakumar, SCGSC., SR.60222
1 cc to Mr.T.N.Sugesh, Advocate, SR.60049

ra (co)

dv/13.12.06

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